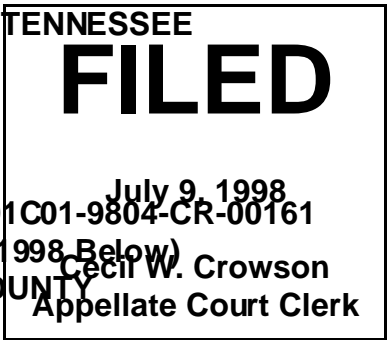


IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE



KEVIN SMITH TUCKER,)
) C.C.A. NO. 01C01-9804-CR-00161
Appellant,) (No. CR301-1998-Below)
) SUMNER COUNTY Cecil W. Crowson
VS.) Appellate Court Clerk
)
) The Hon. Jane Wheatcraft
STATE OF TENNESSEE,)
)
) (Dismissal of Post-Conviction Petition)
Appellee.)
)
) AFFIRMED PURSUANT TO RULE 20

ORDER

This matter is before the Court upon the state's motion requesting that the judgment in the above-styled cause be affirmed pursuant to Rule 20, Tennessee Court of Criminal Appeals Rules.

The petitioner pled guilty to one count of aggravated rape and one count of armed robbery on January 15, 1986, and was subsequently sentenced on March 6, 1986. This Court affirmed the judgment in State v. Kevin Smith Tucker, No. 86-79-III (Tenn. Crim. App., at Nashville, Feb. 20, 1987), and mandate issued on May 20, 1987. It does not appear that an application for permission to appeal was filed in the Supreme Court. The petitioner filed his first post-conviction petition on March 19, 1998. Subsequently, on March 25, 1998, the trial court dismissed the petition as outside the statute of limitation. We affirm.

Pursuant to T.C.A. § 40-30-206(a), a petitioner must petition for post-conviction relief within one year of the date of the final action of the highest state appellate court to which an appeal was taken. The Compiler's Notes to T.C.A. § 40-30-201 states that the 1995 Post-Conviction Act governs all petitions for post-conviction relief filed after May 10, 1995.

Under T.C.A. § 40-30-202(b), a court does not have jurisdiction to consider a petition for post-conviction relief if it was filed outside the one-year statute of limitation unless (1) the claim in the petition is based upon a final ruling of an appellate court

establishing a constitutional right that was not recognized as existing at the time of trial, if retrospective application of that right is required; (2) the claim in the petition is based upon new scientific evidence establishing that such petitioner is actually innocent of the offense or offenses for which the petitioner was convicted; or (3) the claim in the petition seeks relief from a sentence that was enhanced because of a previous conviction and such conviction in the case in which the claim is asserted was not a guilty plea with an agreed sentence, and the previous conviction has subsequently been held to be invalid.

In the present case, the petitioner filed his petition for post-conviction relief on March 19, 1998, and therefore, the petition is governed by the 1995 Post-Conviction Act. The petition was filed outside the statute of limitation set forth in T.C.A. § 40-30-202(a), and the petitioner has failed to show that any of his claims fall within one of the exceptions set forth in T.C.A. § 40-30-202(b).

IT IS, THEREFORE, ORDERED that the state's motion to affirm the judgment of the trial court under Rule 20, Tennessee Court of Criminal Appeals Rules, is granted, and the judgment of the trial court is affirmed. It appearing that the petitioner is indigent, costs of these proceedings are taxed to the state.

DAVID H. WELLES, JUDGE

CONCUR:

JERRY L. SMITH, JUDGE

THOMAS T. WOODALL, JUDGE